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IN THE

Supreme Court of the United States.

Martin Daly,
Plaintiff in Error,
vs.
Charles Elton, Chief of Police of the City of Los Angeles,
Defendant in Error.

No. 1302 108.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

MOTION TO ADVANCE CAUSE FOR ARGUMENT.

LYNN HELM,
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J. R. SCOTT,
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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1942.

No. 408.

Martin Daly,
Plaintiff in Error,

vs.

Charles Elton, Chief of Police of the City of Los Angeles,
Defendant in Error.

In Error to the Supreme Court of the State of California.

MOTION TO ADVANCE CAUSE UNDER RULE 26, PAR. 3.

And now comes the said Martin Daly, plaintiff in error, and moves to advance the above entitled cause, in accordance with the provisions of Par. 3, Rule 26 of this court, the said writ of error being to review the final decision of the Supreme Court of the state of California discharging the writ of habeas corpus issued in the matter of the application of Martin Daly for a writ of habeas corpus.

Leon Keller,
Hayes T. Lee,
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Edward C. Ballon,
Charles W. Cohn,
Attorneys for Plaintiff in Error.

STATEMENT OF MATTERS INVOLVED AND REASONS FOR APPLICATION.

May It Please Your Honors:

This is a writ of error to the Supreme Court of the State of California to review the decision of said Supreme Court of the State of California discharging the writ of habeas corpus issued upon the application of the plaintiff in error, Martin Daly.

The question involved is whether an ordinance of the City of Los Angeles, adopted on the 3rd day of March, 1902, amending an ordinance of August 26th, 1901, in reference to the erection or maintenance of gas works within certain portions of the City of Los Angeles is valid and binding upon the petitioner, an employee of CarolineW. Dobbins, engaged in the business of erecting gas works upon the premises of the said Caroline W. Dobbins, as against their right to conduct a lawful business, and as against the vested rights which they had acquired by virtue of legislative authority, and as depriving petitioner of his liberty, and his employer of her property, without due process of law.

A crime or offense for which an offender can be prosecuted is not created by an invalid law or ordinance. It is claimed by the plaintiff in error that the ordinance in question of the City of Los Angeles, adopted March 3rd, 1902, was an invalid ordinance as against the rights of the petitioner, and the violation thereof by him did not create a public offense.

On the 26th day of August, 1901, the City Council of the City of Los Angeles passed an ordinance entitled "An Ordinance prohibiting the erection or maintenance of gas works, gas tanks, or reservoirs" within certain portions of the City of Los Angeles, No. 6663, New Series. The ordi-

nance of March 3rd, 1902, in question, is an amendment thereof.

It was provided in the ordinance that it should be unlawful for any person, firm or corporation to erect or cause to be erected, maintain, or cause to be maintained, any works, establishment or manufactory for the manufacture of gas, or any tank, reservoir or other receptacle for the storage of gas, within the corporate limits of the City of Los Angeles, outside of the district described in the ordinance. The district described in the ordinance included a district having an area of one and a quarter square miles within the city limits of the City of Los Angeles, out of an area of about forty-two square miles. The violation of the ordinance was made a misdemeanor, punishable by fine of not less than $100 or more than $500, or by imprisonment in the city jail for not less than 30 days or more than 100 days, or by both such fine and imprisonment. Every day that said gas works, gas tanks or reservoirs should be maintained in violation of the provisions of said ordinance should be deemed a separate offense within the meaning thereof. After the passage of this ordinance, Mrs. Caroline W. Dobbins, the employer of the petitioner, on the 28th day of September, 1901, for the purpose of erecting gas works for the manufacture, recovery, storage and distribution of gas for the purpose of supplying the inhabitants of the City of Los Angeles with gaslight, purchased within the district within the City of Los Angeles within which it was lawful to erect gas works, as described in the ordinance aforesaid, a piece of land consisting of three lots and a half, which are described in the petition for a writ of habeas corpus herein.

On the first day of November following Mrs. Dobbins applied to the Board of Fire Commissioners of the City of Los Angeles for a permit to erect and maintain gas works upon said premises, under what is known as "The Building Ordi-

nance of the City of Los Angeles," which required that a person desirous of erecting gas works within the City of Los Angeles, should first secure from the Board of Fire Commissioners a permit so to do. This ordinance gave the Board of Fire Commissioners power to grant or refuse such permit.

Upon the hearing of this application of Mrs. Dobbins by the Board of Fire Commissioners, the Board of Fire Commissioners, on November 22nd, 1901, duly granted to Mrs. Dobbins a permit to erect the gas works; and immediately thereafter she commenced the erection of gas works upon the premises which she had purchased as aforesaid within the district within which it was lawful to erect gas works, under the ordinance of August 26th, 1901, and by virtue of this permit granted by the Board of Fire Commissioners, work was prosecuted in the construction of said works, and on said premises there was erected and nearly completed a gas generator, scrubber, and purifier, and Mrs. Dobbins was constructing a water tank and gas holder, on which petitioner was employed; she had expended in the erection of said gas works upwards of $25,000, relying upon the permit given her by the Board of Fire Commissioners, and upon the privileges conferred by the ordinance of August 26th, 1901.

On the 3rd day of March, 1902, while said work was in progress, as aforesaid, the City Council of the City of Los Angeles amended the ordinance of August 26th, 1901, aforesaid, by contracting the limits of the district described therein and cutting out and eliminating from the territory within such limits the premises which had been purchased by Mrs. Dobbins, and upon which she was then erecting the gas works as aforesaid. The amendment was an amendment to Section one thereof, contracting the limits of the district in which it was lawful by implication to erect gas works; all other territory of the City of Los Angeles being thereby ex-

cluded. There were no changes in the ordinance, the penalties for violation thereof remaining the same. This is the ordinance, the validity of which is in question.

On the 6th day of March following, an attempt was made to enforce this ordinance by arresting all the employes of Mrs. Dobbins, including the petitioner. On the 27th day of June, 1902, a hearing was had before the Police Magistrate, which resulted in a judgment of conviction of the said plantiff in error, and this judgment of the Police Court, on appeal, was affirmed by the Superior Court upon a hearing before the Honorable Lucien Shaw, then judge of said Superior Court.

Application was then made for a writ of habeas corpus in this matter to the Supreme Court of the State of California, and upon a hearing thereof, the Supreme Court of the State of California, by a divided Court, sustained the validity of said ordinance of March 3rd, 1902, and discharging the writ, remanded the prisoner to the custody of the said Charles Elton, Chief of Police of the City of Los Angeles, defendant in error to be held by virtue of his conviction by the Police Court of the City of Los Angeles for the alleged violation of said ordinance.

It will appear from an examination of the record in this case, that upon a petition for a rehearing before the Supreme Court of the State of California [Tr. R. fol. 57], that Mr. Justice Van Dyke did not participate therein, and that Chief Justice Beatty, Justice Lorigan, and Justice Henshaw dissented from the order denying the rehearing, Justice McFarland, who wrote the opinion in the Dobbins case, Justice Angellotti and Justice Shaw (Justice Shaw having been elevated to the Supreme Bench of the State of California after having rendered his decision in the Superior Court of Los Angeles county, California, on the appeal of the said

petitoner from the said judgment in the police court of the city of Los Angeles) concurring in the order denying the petition for a rehearing.

From this order denying the petition for rehearing and remanding the prisoner to the custody of said Charles Elton, Chief of Police, defendant in error, a writ of error was by the said plaintiff in error, Martin Daly, sued out to the said Supreme Court of the State of California, and has been duly allowed.

This motion is made to advance this cause for argument.

The decision in this case was made and judgment entered in the Supreme Court of the State of California upon the grounds set forth in the opinion rendered at the same time in the case of Dobbins v. the City of Los Angeles, in which case the validity of the ordinance in question was directly involved, and it was there held that the same was valid. On the authority of that case, the prayer of the petitioner, Martin Daly, was denied. The case of Dobbins v. the City of Los Angeles, referred to by the Supreme Court of the State of California in their decision in the matter of the application of Martin Daly for a writ of habeas corpus is also pending before this court on writ of error to the Supreme Court of the State of California (October term, 1903, No. 400), from the decision rendered therein, and as the same question is involved in that case as in this case, a motion will be made in that case that this case of Martin Daly, plaintiff in error, v. Charles Elton, Chief of Police of the City of Los Angeles, defendant in error, and the said Dobbins case be heard together, and argued as one case. [Rule 26, Par. 8.]

This case should be advanced and have precedence of other cases on the docket of this court.

It comes within the provisions of Section 710, Revised Statutes. "Cases on writ of error to review the judgment

of the State Court in any criminal case shall have precedence on the docket of the Supreme Court, of all cases to which the Government of the United States is not a party, excepting only such cases as the court, in its discretion, may decide to be of public importance."

This case is also within the rule of this court [Rule 26, Par. 3], that criminal cases may be advanced by leave of court on motion of either party. This cause is a criminal case within the statute and rule above quoted.

It is respectfully suggested that this case be set down for hearing as soon as possible after the 15th of January, 1904.

Respectfully submitted.

LYNN HELM,
HENRY T. LEE,
J. R. SCOTT,
EDWARD C. BAILEY,
CHARLES W. CHASE,
Attorneys for Plaintiff in Error.

Received a copy of the foregoing motion and statement of matters involved, with reasons for the application, this .....day of November, 1903; and consent is hereby given that said application may be heard by the Supreme Court on Monday, the .....day of December, 1903, at the opening of court.

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